

**VOLUNTARY CLEANUP CONTRACT
15-5854-RP**

**IN THE MATTER OF
BUS TRANSFER STATION SITE, SPARTANBURG COUNTY
and
CITY OF SPARTANBURG**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and the City of Spartanburg, pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760, as amended, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 to 9675, as amended, and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, with respect to the facility known as the Bus Transfer Station Site ("Site"). The City of Spartanburg Bus Transfer Station property is located at 100 North Liberty Street, Spartanburg, South Carolina ("Property"). The Property includes approximately 0.4 acres and is bounded generally by Liberty Street on the east; Commerce Street on the north; Dunbar Street on the south; and North Church Street on the west. The Property is identified by the County of Spartanburg as a portion of Tax Map Serial Number 7-12-18-048.00; and a legal description of the Property is attached to this Contract as Appendix A.

DEFINITIONS

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, the HWMA, and in regulations promulgated under the foregoing statutes, or the Brownfields/Voluntary Cleanup Program.

- A. "Spartanburg" shall mean the City of Spartanburg, SC.
- B. "Contract" shall mean this Responsible Party Voluntary Cleanup Contract.
- C. "Pollutant" or "Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism,

either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; "contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.

- D. "Contamination" shall mean impact by a Contaminant or Hazardous Substance.
- E. "Department" shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Hazardous Substance" shall have the same meaning as defined under subparagraphs (A) through (F) of Paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601(14).
- G. "Property" as described in the legal description attached as Appendix A, shall mean that portion of the Site, which is subject to ownership, prospective ownership, or possessory or contractual interest of Spartanburg.
- H. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.

- I. "Site" shall mean all areas where a Hazardous Substance, Pollutant or Contaminant has been released, deposited, stored, disposed of, or placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA.
- J. "Voluntary Cleanup" shall mean a Response Action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 to 760, as amended.
- K. "Work Plan" shall mean the plan for additional Response Actions to be conducted at the Site as described in Paragraph 3 of this Contract.

FINDINGS

2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

A. The following historical use of the Property is based on various reports and information provided to the Department:

- 1. A City Directory review lists Horton's Cleaners at 124 N. Liberty Street in 1946 -1975. The 1934 City directory lists Dixie Shirt and Co. Inc as occupying addresses 118-124 North Liberty. The 1888 Sanborn Maps indicate that the southern edge of the property located at 120 N. Liberty Street was occupied by F. Canterell Co. Carriage & General Wood Work. The 1918 City Directory lists occupants as Dunbar Brothers Vehicles. In 1923 the occupant is listed as Dunbar Brothers, a Repair and Auto Storage shop. The 1951 and 1955 City Directories list 122-124 N. Liberty as Dunbar & Ellis Furniture. The 1964 Sanborn map identifies the property as a Furniture business; the city directories list

the property as Dunbar and Ellis Furniture store in 1960, 1965 and 1970.

2. Spartanburg purchased the Property in 1974. At that time, the Property was developed with a multi-level parking garage.
- B. During construction of the Dunbar Street Parking Garage in 2002, a City contractor detected strong solvent odors and stained soil on the Property. Spartanburg engaged Engineering Consulting Services (ECS) to conduct an environmental site assessment on the Property to identify any potential sources of the odors and stained soil.
 - C. A Phase I Assessment performed by ECS for Spartanburg in 2002 identified a former dry cleaner which had operated on the northern edge of the Property. The Phase I Assessment report also included Sanborn Maps from 1953 and 1964 showing a solvent tank notation for the Property.
 - D. In May 2002, Spartanburg engaged ECS to conduct a Phase II Assessment. Six direct push borings were performed. The boring near the northwestern portion of the Property exhibited the highest concentrations of constituents of concern. The highest concentration for each constituent reported is as follows: Tetrachloroethene 383 µg/L; Trichloroethene 497 µg/L; 1,2-Dichloroethane 130 µg/L; Cis-1,2-Dichloroethene 962 µg/L; and Vinyl Chloride 99.6 µg/L. A windshield survey conducted by ECS as part of a Tier I Evaluation indicated that there are no residential or municipal water wells within a 1,000-foot radius of the Property. Spartanburg submitted the Phase II Assessment Report to the Department.
 - E. During construction of the Dunbar Street Parking Garage, Spartanburg removed and disposed of 23.5 tons of contaminated soil so the footings for the garage could be installed. The Bus

Transfer Station was also constructed in 2002. Construction of both the Bus Transfer Station and the Dunbar Street Parking Garage required substantial excavation below existing grade. No underground storage tanks (USTs) were encountered during those excavation activities. During construction of the Dunbar Street Parking Garage, Spartanburg placed approximately 3-4 feet of fill material over the pre-existing grade. Upon the conclusion of the 2002 construction on the Property, the Property was substantially covered by buildings or hardscape, and stormwater on the Property is captured in an on-site stormwater management system and discharged to the municipal stormwater system.

- F. In 2002, Spartanburg submitted to the Department a Corrective Action Plan which recommended monitored natural attenuation. The Department approved this Corrective Action Plan.
- G. From 2002 through 2005, Spartanburg conducted additional groundwater investigations to determine the extent of contamination at the Site. Five permanent groundwater wells were installed and sampled in August 2002. MW-1 was installed in the vicinity of the direct push point with the highest concentration from the Phase 2 Assessment in 2002. MW-1 had a tetrachloroethene concentration of 1860 µg/L.
- H. In May 2005, Spartanburg submitted another Corrective Action Plan to the Department, recommending aggressive fluid vapor recovery and enhanced bioremediation. The Corrective Action Plan was approved by the Department, and Spartanburg engaged Schnabel Engineering, LLC (Schnabel) to implement the Corrective Action Plan.
- I. In February 2006, Schnabel installed ten injection wells for the remediation system.
- J. In March 2006, three (3) eight (8) hour aggressive fluid/vapor recovery (AFVR) events were performed. Each eight-hour AFVR

event was performed on extraction wells IW-1 through IW-10. A total of 5,801 gallons of groundwater was recovered and approximately 41 pounds of VOCs were removed. During the AFVR events, total field gauged volatile organic compounds indicated a decrease from 1,000 ppm to 50 ppm. Based on the reduction in total organic vapor concentrations and dissolved constituent concentrations in subsequent quarterly groundwater monitoring events, the AFVR events were effective in reducing the source materials in the vadose zone above the groundwater table.

- K. In June 2006, Schnabel implemented Enhanced Bioremediation to treat constituents in the groundwater as recommended in the 2005 Corrective Action Plan with the injection of 696 gallons of soybean oil into injection wells IW-1 thru IW-10. The injection activities preceded under the approved Underground Injection Control Permit #862. The baseline worst case well concentration of Tetrachloroethene in MW-1 was reduced from 270 µg/L (April 2006) to less than 1 µg/L in January 2008.
- L. In April 2008, 150 gallons of soybean oil was injected in to injection wells IW-8, IW-9, and IW-10. Following this injection of soybean oil, concentrations of Cis-1,2 Dichloroethene were reduced from 400 µg/L to 154 µg/L and 1,2 Dichloroethane was reduced from 42 µg/L to 16.3 µg/L. Tetrachloroethene was less than 1.9 µg/L; Trichloroethene was reduce from 3.4 µg/L to 2.6J µg/L, and ; Vinyl Chloride was reduced from 10 µg/L to less than 1.9 µg/L.
- M. In 2009, the Department reduced the Corrective Action Effectiveness Monitoring Events from quarterly to annually to evaluate the long-term trend in groundwater constituent concentrations. Annual Reports through September 2013 indicate a reduction in concentrations of Tetrachloroethene, Trichloroethene and Vinyl Chloride in MW-1; however, beginning with the September 2009 annual sampling event indicates an increasing

trend was observed for Cis-1,2 Dichloroethene, a less toxic degradation daughter product of Tetrachloroethene and Trichloroethene. Since the September 2011 annual monitoring event, the Cis-1,2 Dichloroethene concentration has stabilized and MW-1 is the only monitoring well from which the sampling has detected constituents above any maximum contaminant level (MCL) in drinking water under South Carolina R. 61-58.

RESPONSE ACTIONS

3. Spartanburg agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Site that is consistent with the technical intent of the National Contingency Plan. The Work Plan shall be implemented upon written approval from the Department. The Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the analytical laboratory certified by the Department, and Spartanburg's contact person for matters relating to this Contract. Spartanburg will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify Spartanburg in writing of any deficiencies in the Work Plan, and Spartanburg will respond in writing to the Department's comments within thirty (30) days. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

- A. Since 2002, Spartanburg has conducted comprehensive environmental assessment to determine the source, nature and extent of the contamination at the Site. In accordance with the Department's approval, Spartanburg has performed extensive remediation to address the contamination. Spartanburg agrees to submit a work plan that outlines the completion of a groundwater receptor survey and a risk evaluation for groundwater using the data collected to date for the Site.

B. Spartanburg agrees to submit to the Department the findings of the groundwater receptor survey and the risk evaluation to evaluate whether a human health or ecological exposure pathway exists for groundwater due to the remaining contaminants at the Site. The evaluation will be performed in accordance with the schedule in the approved Work Plan. If the groundwater receptor survey and/or the risk evaluation determine that a potential exposure pathway may exist for groundwater, the Department will advise Spartanburg in writing that additional field investigation is necessary to further determine whether the potential exposure pathway is complete and to assess the likelihood of future impact from the Site. The additional field investigation will include the installation of a groundwater monitoring well between the source area on the Site within the aquifer utilized by the potential receptor identified by the potentially complete exposure pathway analysis. If the Department determines that the risk evaluation shows that an incomplete exposure pathway exists for groundwater, but the report is incomplete, the Department shall send to Spartanburg a letter indicating that revision of the report is necessary. Within sixty (60) days of receipt of such letter from the Department, Spartanburg shall submit a revised report addressing the Department's comments.

C. If determined necessary by the Department, conduct a Feasibility Study to evaluate remedial alternatives for addressing Contamination at the Site.

4. Spartanburg shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan is submitted to the Department for information purposes only. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by Spartanburg.

5. Spartanburg shall inform the Department in writing at least five (5) working days in advance of all field activities pursuant to this Contract and, if deemed necessary by the Department, shall allow the Department and its authorized representatives to take duplicates of any samples collected by Spartanburg pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter, Spartanburg shall submit to the Department a written progress report that must include the following: (A) actions taken under this Contract during the previous reporting period; (B) actions scheduled to be taken in the next reporting period; (C) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (D) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

7. All correspondence which may or are required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if delivered by (A) regular U.S. mail, (B) certified or registered mail, postage prepaid, return receipt requested, (C) or nationally recognized overnight delivery service company, or (D) by hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

Unless otherwise directed in writing by either party, all correspondence, work plans, and reports should be submitted to:

The Department: Jan Trent
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
trentjc@dhec.sc.gov

The City of Spartanburg: Ed Memmott, City Manager
City of Spartanburg
145 West Broad Street
Spartanburg, SC 29306

All final work plans and reports shall include two (2) paper copies and one (1) electronic copy on compact disk.

PUBLIC PARTICIPATION

8. Upon execution of this Contract, the Department will seek public participation in accordance with S.C. Code Ann. § 44-56-740(D), and not inconsistent with the National Contingency Plan. Spartanburg will reimburse the Department's cost associated with public participation (e.g., publication of public notice(s), building and equipment rental(s) for public meetings, etc.).

RESPONSE COSTS

9. In accordance with §§ 44-56-200 and 44-56-740, Spartanburg shall, on a quarterly basis, reimburse the Department for Oversight Costs of activities required under this Contract. Oversight Costs include, but are not limited to, the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work and activities and costs associated with public participation. Payments will be due within thirty (30) days of the Department's invoice date. The Department shall provide documentation of its Oversight Costs in sufficient detail so as to show the personnel involved, amount of time spent on the project for each person, expenses, and other specific costs. Invoices shall be submitted to:

The City of Spartanburg Ed Memmott, City Manager
City of Spartanburg
145 West Broad Street
Spartanburg, SC 29306

All of Spartanburg's payments should reference the Contract number on page 1 of this Contract and be made payable to:

The South Carolina Department of Health & Environmental Control

If complete payment of the quarterly billing of Oversight Costs is not received by the Department by the due date, the Department may bring an action to recover the amount owed and all costs incurred by the Department in bringing the action including, but not limited to, attorney's fees, Department personnel costs, witness costs, court costs, and deposition costs.

ACCESS

10. The Department, its authorized officers, employees, representatives, and all other persons performing Response Actions will not be denied access to the Site during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). Spartanburg and subsequent owners of the Property shall ensure that a copy of this Contract is provided to any lessee or successor or other transferee of the Property, and to any owner of other property that is included in the Site. If Spartanburg is unable to obtain access from the Property owner, the Department may obtain access and perform Response Actions. All of the Department's costs associated with access and said Response Actions will be reimbursed by Spartanburg.

RESTRICTIVE COVENANT

11. If hazardous substances in excess of residential standards exist at the Property after Spartanburg has completed the actions required under this Contract, Spartanburg shall enter and file a restrictive covenant. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of Spartanburg and witnessed, signed, and sealed by a notary public. Spartanburg shall file this restrictive covenant with the Register of Deeds or Mesne Conveyances in Spartanburg County. The signed covenant shall be incorporated into this Contract as an Appendix. A Certificate of Completion shall not be issued by the Department until the Restrictive Covenant, if required, is executed and recorded. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean-up standards

at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require Spartanburg or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. Spartanburg or subsequent owners of the Property shall file an annual report with the Department by May 31st of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the Property. The report must be submitted in a manner prescribed by the Department.

OBLIGATIONS AND BENEFITS

12. Upon execution of this Contract by the Department, Spartanburg, its signatories, parents, subsidiaries, successors and assigns, shall be deemed to have resolved their liability to the State in an administrative settlement for purposes of, and to the extent authorized under 42 U.S.C. § 9613(f)(2) and § 9613(f)((3)(B), S.C. Code Ann. § 44-56-200, for the Response Actions specifically covered in the Contract including the approved Work Plan(s) and reports. A thirty (30) day comment period shall be required prior to the Department's execution of the Contract, and shall commence upon publication of the notice of the proposed Contract in the South Carolina State Register.

13. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation not a signatory of this Contract or a signatory's parent, successor, assign, or subsidiary.

14. Subject to Paragraph 16, nothing in this Contract is intended to limit the right of the Department to undertake future Response Actions at the Site or to seek to compel parties to perform or pay for costs of Response Actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of Response Actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

15. Subject to the provisions of Paragraph 16, nothing in this Contract is intended to be or shall be construed as a release or covenant not to sue for any claim or cause of action that the Department may have against Spartanburg for any matters not expressly included in this Contract.

16. Upon successful completion of the terms of this Contract and the approved Work Plan as referenced in Paragraph 3 above, Spartanburg shall submit to the Department a written notice of completion.

Once the Department determines that Spartanburg has successfully and completely complied with this Contract, the Department, pursuant to S.C. Code Ann. § 44-56-740(A)(5) and (B)(1), will give Spartanburg a Certificate of Completion that provides a covenant not to sue to Spartanburg, its signatories, parents, successors, and subsidiaries, for the work done in completing the Response Actions specifically covered in the Contract and completed in accordance with the approved work plans and reports. The covenant not to sue and administrative settlement for purposes of contribution protection are contingent upon the Department's determination that Spartanburg successfully and completely complied with the Contract.

In consideration of the Department's covenant not to sue, Spartanburg its signatories, parents, successors, assigns, and subsidiaries agree not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

17. Spartanburg and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should Spartanburg elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard shall be stabilized and/or mitigated such that the Site

does not pose a hazard to human health or the environment that did not exist prior to any initial Response Action addressing Contamination identified in this Contract.

18. The Department may terminate this Contract only for cause, which may include but is not limited to, the following:

- A. Events or circumstances at the Site that are inconsistent with the terms and conditions of this Contract;
- B. Failure to complete the terms of this Contract or the Work Plan;
- C. Failure to submit timely payments for Past Costs and/or for Oversight Costs as defined in Paragraph 9 above;
- D. Additional Contamination or releases or consequences at the Site caused by Spartanburg its parents, successors, assigns, and subsidiaries;
- E. Providing the Department with false or incomplete information or knowingly failing to disclose material information;
- F. Change in Spartanburg's or its parents, successors, assigns, and subsidiaries business activities on the Property or uses of the Property that are inconsistent with the terms and conditions of this Contract; or
- G. Failure by Spartanburg to obtain the applicable permits from the Department for any Response Action or other activities undertaken at the Property.

19. Upon termination of the Contract under Paragraph 18, the covenant not to sue and administrative settlement for purposes of contribution protection shall be null and void. Termination of the Contract by Spartanburg or the Department does not end the obligations to reimburse Oversight Costs already incurred by the Department and payment of such costs shall become immediately due.

20. The signatories below hereby represent that they are authorized to and enter into this Contract on behalf of their respective parties.


**THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL**

BY: _____ DATE: _____
Daphne G. Neel, Chief
Bureau of Land and Waste Management
Environmental Quality Control

Reviewed by Office of General Counsel

DATE: _____

THE CITY OF SPARTANBURG

 _____ DATE: 7/13/15
Signature

Ed Memmott City Manager
Printed Name and Title

APPENDIX A

Legal Description of the Property

County of Spartanburg

A Portion of Tax Map Serial Number 7-12-18-048.00

All that certain piece, parcel, lot or tract of land, together with the improvements thereon situate, in the City of Spartanburg, County of Aiken and in the State of South Carolina, said lot containing approximately 0.4 acres and shown on a plat entitled "SURVEY FOR CITY OF SPARTANBURG ADJOINING CITY PARKING DECK, SPARTANBURG, S.C." prepared by Gooch & Associates, P.A., dated July 6, 2015, and attached hereto.

Portion of Spartanburg County TMS No. 7-12-18-048.00

(See next page for survey)

